

★ APR 14 2009 ★

Frank J. Martinez (FJM-2149)
 THE MARTINEZ GROUP PLLC
 55 Washington Street, Suite 316
 Brooklyn, New York 10022
 718.797.2341 Telephone
 718.222.0481 Facsimile
 FM@martinezgroup.com
 Attorney Docket: 1235-2

BROOKLYN OFFICE

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK**

SUSAN HAPPERSETT, and ESTHER K. SMITH, d/b/a, Purgatory Pie Press, and DIKKO FAUST, d/b/a, Purgatory Pie Press,	Plaintiffs,
-against-	(Jury Trial Demanded)
ANTHROPOLOGIE, INC.,	Defendant.

X

09

1556

CV COMPLAINT

(Jury Trial Demanded)

BLOCK, J.

LEVY, M.J.

Plaintiffs, SUSAN HAPPERSETT, an individual and ESTHER K. SMITH, d/b/a PURGATORY PIE PRESS, and DIKKO FAUST, d/b/a PURGATORY PIE PRESS (collectively "Plaintiff" or "PPP"), by and through its attorneys, The Martinez Group PLLC, for its Complaint against Defendant, ANTHROPOLOGIE, INC., ("Defendant" or "Anthropologie"), hereby alleges as follows:

NATURE AND SUBSTANCE OF THE ACTION

1. Plaintiff files this action against Defendant for Copyright infringement under 17 U.S.C. § 101, et seq., and Unfair Competition under the Lanham Act, 15 U.S.C. § 1125(a) and applicable State laws.

2. This action is brought in response to a classic case of Copyright infringement; specifically, the unauthorized copying and commercial, for-profit manufacture and distribution of a commercial product bearing an unauthorized copy of Plaintiff's limited edition Work entitled FIBONACCI FLOWER (the "Work").
3. In particular, Defendant has infringed Plaintiff's FIBONACCI FLOWER Work by using the artwork embodied therein to manufacture, distribute and sell a product known as the Colossal Bloom Rug (the "Rug").
4. Title 17 of the United States Code (Copyright Act) was enacted to provide remedies to copyright owners who suffer damages by reason of such actions.

JURISDICTION AND VENUE

5. This is an action for Copyright infringement arising under the Copyright Act, 17 U.S.C. § 101 et seq., and for the related claims of Unfair Competition under 15 U.S.C. § 1125(a) and applicable State laws, which seeks damages by reason of Defendant's ongoing infringement of Plaintiff's valid and subsisting Copyright and Unfair Competition under Federal law and applicable state law.
6. This Court has jurisdiction of this action under 28 U.S.C. §§ 1331, 1332, 1338(a) and 1338(b), its supplemental jurisdiction, and under Rule 4 of the Federal Rules of Civil Procedure.
7. Venue is proper in this district under 28 U.S.C. §1391 and §1400 in that Defendant or Defendant's agents may be found in this District and Defendants transact business in this District.

PARTIES

8. Plaintiff Susan Happerset is an individual, and an artist and a co-author of the FIBONACCI FLOWER Work identified herein and for the purposes of this action, has a place of business located at 19 Hudson Street, Suite 403, New York, New York, 10013.
9. Plaintiff Esther K. Smith is an individual and an artist, d/b/a Purgatory Pie Press and is a co-author of the FIBONACCI FLOWER Work identified herein and has a place of business located at 19 Hudson Street, Suite 403, New York, New York, 10013.
10. Plaintiff Dikko Faust is an individual and an artist, d/b/a Purgatory Pie Press and is a co-author of the FIBONACCI FLOWER Work identified herein and has a place of business located at 19 Hudson Street, Suite 403, New York, New York, 10013.
11. Defendant Anthropologie, Inc. is a Pennsylvania Corporation with its principal place of business at 5000 South Broad Street, Philadelphia, Pennsylvania, 19112-1495.
12. Defendant Anthropologie is a wholly owned subsidiary of Urban Outfitters, Inc., a Pennsylvania Corporation, having a principal place of business at 5000 South Broad Street Philadelphia, Pennsylvania, 19112-1495.
13. Defendant Anthropologie is authorized by the New York Secretary of State to conduct business in New York State.
14. Defendant Anthropologie maintains retail stores throughout the United States having at least six (6) retail stores in New York State, including one within the Eastern District.
15. Anthropologie is a designer and manufacturer of clothing, personal accessories, and home decorating products, which it sells at its many retail locations around the country.
16. Anthropologie further conducts business on the Internet, via an online Internet store, located at <http://www.anthropologie.com>.

FACTS COMMON TO ALL CLAIMS

17. Plaintiff is engaged in the business of designing, creating, producing, and marketing art works in the form of, *inter alia*, hand-printed, limited-edition books, examples of which may be seen at <http://purgatorypiepress.com/artistbooks.html>.
18. Plaintiff created and is the exclusive owner of all rights, titles and interests in and to the copyrighted designs for the FIBONACCI FLOWER Work.
19. Plaintiff is the owner of U.S. Copyright Registration, Serial No.: VA 1-659-243, a copy of which is annexed hereto as Exhibit A.
20. Plaintiff's Copyright is valid and subsisting.
21. Plaintiff is and has been, at all times alleged herein, the sole owner of all rights, titles and interests in and to the FIBONACCI FLOWER work
22. Plaintiff has sold and continues to sell and derive significant revenue from the sale of art works and limited-edition art books, including the FIBONACCI FLOWER Work identified herein. A showing of the FIBONACCI FLOWER Work is annexed hereto as Exhibit B.

DEFENDANT'S ACTIONS

23. On or about October 24, 2008, a group of representatives from Defendant's parent company, Urban Outfitters attended the New York Artist Book Fair ("Fair"), where Plaintiff's FIBONACCI FLOWER Work was on display, a showing of which is annexed hereto as Exhibit C.
24. Representatives from Anthropologies parent company, Urban Outfitters, Inc. had access to Plaintiff's Work and copied Plaintiff's work, in that, Plaintiff was observed

surreptitiously taking pictures of Plaintiff's FIBONACCI FLOWER Work using small digital cameras and mobile telephone cameras.

25. Defendant's access and viewing of Plaintiff's Work is clearly demonstrated by the entry of a signature and contact information set down in Plaintiff's visitor guestbook by Ms. Alana Mclean (amclean@urbanout.com), a showing of which is annexed hereto as Exhibit D.
26. Defendant Anthropologie subsequently created its COLOSSAL BLOOM RUG ("Rug") using an unauthorized copy of the FIBONACCI FLOWER Work, showings of which, together with a side-by-side, split-image comparison are annexed hereto as Exhibit E.
27. Defendant Anthropologie has not sought permission to use Plaintiff's Work or otherwise purchased a license to use the FIBONACCI FLOWER Work as a resource for the creation of its Rug.
28. Defendant Anthropologie's copying of the FIBONACCI FLOWER Work is an infringement of Plaintiff's valid copyright.
29. The natural, probable and foreseeable result of Defendant's wrongful conduct has, and continues to be, to deprive Plaintiff of the benefits and revenue from the sale of licenses to use the FIBONACCI FLOWER Work and injury to Plaintiff's relationships with present and prospective customers.
30. Plaintiff has lost, and will continue to lose, substantial revenue from Defendant's wrongful and willful actions complained of herein.
31. Defendant's wrongful conduct has deprived, and will continue to deprive, Plaintiff of opportunities for expanding the goodwill associated with the FIBONACCI FLOWER Work.

32. Defendant has refused to cease and desist from infringing upon Plaintiff's valuable copyright despite demands for such action.

**FIRST CAUSE OF ACTION
COPYRIGHT INFRINGEMENT
17 U.S.C. § 101**

33. Plaintiff repeats and realleges each and every allegation of the Complaint as set forth in Paragraphs 1 through 32, inclusive, and incorporates them herein by this reference.
34. Defendant Anthropology has infringed and will continue to infringe Plaintiff's valuable copyrights in and to the FIBONACCI FLOWER Work.
35. Plaintiff is further entitled to recover damages it has sustained and will continue to sustain, together with any gains, profits, and advantages obtained by Defendant as a result of the acts of infringement alleged herein, as well as attorneys' fees.
36. At present, the amount of such damages, gains, profits, and advantages cannot be fully ascertained by Plaintiff, but they are believed to be not less than \$150,000.
37. Plaintiff has no adequate remedy at law.

**SECOND CAUSE OF ACTION
UNFAIR COMPETITION
15 U.S.C. §1125(a)**

38. Plaintiff repeats and realleges each and every allegation of the Complaint as set forth in Paragraphs 1 through 37, inclusive, and incorporates them herein by this reference.
39. Defendant Anthropologie's unauthorized use and distribution of designs using the FIBONACCI FLOWER Work and the creation of unauthorized derivative works in connection with creation and sale of its clothing, rugs, personal accessories and home decorating products, constitutes false advertising, false designation of origin, and false

descriptions and representations that falsely describe and represent Defendant's goods and/or services as being connected, endorsed or otherwise associated with Plaintiff, and by reason thereof, creates a false description or representation in interstate commerce in violation of 15 U.S.C. § 1125(a).

40. By reason of Defendant's actions, Plaintiff has been and will continue to be so damaged.
41. Plaintiff is further entitled to recover damages it has sustained and will continue to sustain, together with any gains, profits, and advantages obtained by Defendant as a result of the acts of infringement alleged herein, as well as attorneys' fees.
42. At present, the amount of such damages, gains, profits, and advantages cannot be fully ascertained by Plaintiff, but they are believed to be not less than \$150,000.
43. Plaintiff has no adequate remedy at law.

**THIRD CAUSE OF ACTION
DILUTION IN VIOLATION OF NEW YORK
STATE GENERAL BUSINESS LAW §360-1**

44. Plaintiff repeats and realleges each and every allegation of the Complaint as set forth in Paragraphs 1 through 43, inclusive, and incorporates them herein by this reference.
45. Defendant Anthropologie has been, and continues to be, engaged in unfair and deceptive practices in violation of Section 360-1 of New York State General Business Law.
46. By reason of Defendant's acts, Plaintiff has been seriously and irreparably injured, and unless Defendant is restrained, Plaintiff will continue to be so damaged.
47. Plaintiff is further entitled to recover damages it has sustained and will continue to sustain, together with any gains, profits, and advantages obtained by Defendant as a result of the acts of infringement alleged herein, as well as attorneys' fees.

48. At present, the amount of such damages, gains, profits, and advantages cannot be fully ascertained by Plaintiff, but they are believed to be not less than \$150,000.
49. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff respectfully requests and prays that this Court will:

1. Preliminarily and permanently enjoin and restrain Defendant, its associated and parent companies, their officers, directors, principals, agents, servants, employees, successors, assigns and all those in active concert or participation with it from:
 - (a) imitating, copying, distributing, or making unauthorized use of Plaintiff's Registered Copyright including the infringing use of the FIBONACCI FLOWER Work and the artwork and designs embodied therein;
 - (b) manufacturing, creating, producing, advertising, promoting, or displaying any products bearing any simulation, reproduction, counterfeit, copy, derivative version, or colorable imitation of Plaintiff's Copyrighted Work or the designs and artworks embodied therein;
2. Direct that Defendant deliver for destruction at Defendant's expense, *inter alia*, all designs, pictures, and all other recorded media together with all other items, including but not limited to clothing, personal accessories and home decorating products and Rugs in its possession or under their control that were created using Plaintiff's Copyrighted Work or the designs and artworks embodied therein;
3. Direct that Defendant be required to pay Plaintiff damages in the amount of one hundred and fifty thousand dollars (\$150,000) dollars, for all gains, profits and advantages derived by Defendant through their ongoing infringement of Plaintiff's Copyright;

4. Direct that Defendant be required to pay to Plaintiff such other damages that it has sustained as a consequence of Defendant's unauthorized use, copying and distribution of infringing copies and derivative works based upon Plaintiff's Copyrighted Work;
5. Direct the imposition of a constructive trust for all monies received by Defendant from the sale of all goods that are an infringing copy and/or unauthorized derivative works based upon Plaintiff's Copyrighted Work;
6. Direct that Defendant be ordered to make a written report within a reasonable period of time to be filed with the Court detailing the manner of compliance with the requested injunctive and mandatory relief above;
7. Award Plaintiff punitive damages for the willful infringements identified herein;
8. Award Plaintiff the costs of this action together with reasonable attorneys' fees; and
9. Award Plaintiff such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: April 14, 2009

Respectfully submitted,
THE MARTINEZ GROUP PLLC

By:

Frank J. Martinez (FJM-2149)
Attorneys for Plaintiffs
Susan Happerset
Esther K. Smith, d/b/a, Purgatory Pie Press
Dikko Faust, d/b/a, Purgatory Pie Press

THE MARTINEZ GROUP PLLC
55 Washington Street, Suite 316
Brooklyn, New York 11201
718.797.2341 Telephone
718.222.0481 Facsimile
FM@martinezgroup.com

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

A handwritten signature in cursive script that reads "Marybeth Peters".

Register of Copyrights, United States of America

Registration Number:

VA 1-659-243

■ ■
* *

Effective date of
registration:

February 13, 2009

Title

Title of Work: FIBONACCI FLOWER

Completion/Publication

Year of Completion: 2006

Date of 1st Publication: June 15, 2006

Nation of 1st Publication: United States

Author

■ Author: Susan Happersett

Author Created: 2-dimensional artwork

Citizen of: United States

Year Born: 1963

■ Author: Esther K Smith, dba PURGATORY PIE PRESS

Author Created: 2-dimensional artwork

Citizen of: United States

Year Born: 1956

■ Author: Dikko Faust, dba PURGATORY PIE PRESS

Author Created: 2-dimensional artwork

Citizen of: United States

Year Born: 1952

Copyright claimant

Copyright Claimant: Susan Happersett

19 Hudson Street, Suite 403, New York, NY, 10013, United States

Copyright Claimant: Esther K Smith, dba PURGATORY PIE PRESS

19 HUDSON STREET, Suite 403, New York, NY, 10013, United States

Copyright Claimant: Dikkø Faust, dba PURGATORY PIE PRESS
19 HUDSON STREET, SUITE 403, NEW YORK, NY, 10013, United States

Certification

Name: Frank J. Martinez, Esq.

Date: April 2, 2009

Applicant's Tracking Number: 1235-I

Correspondence: Yes

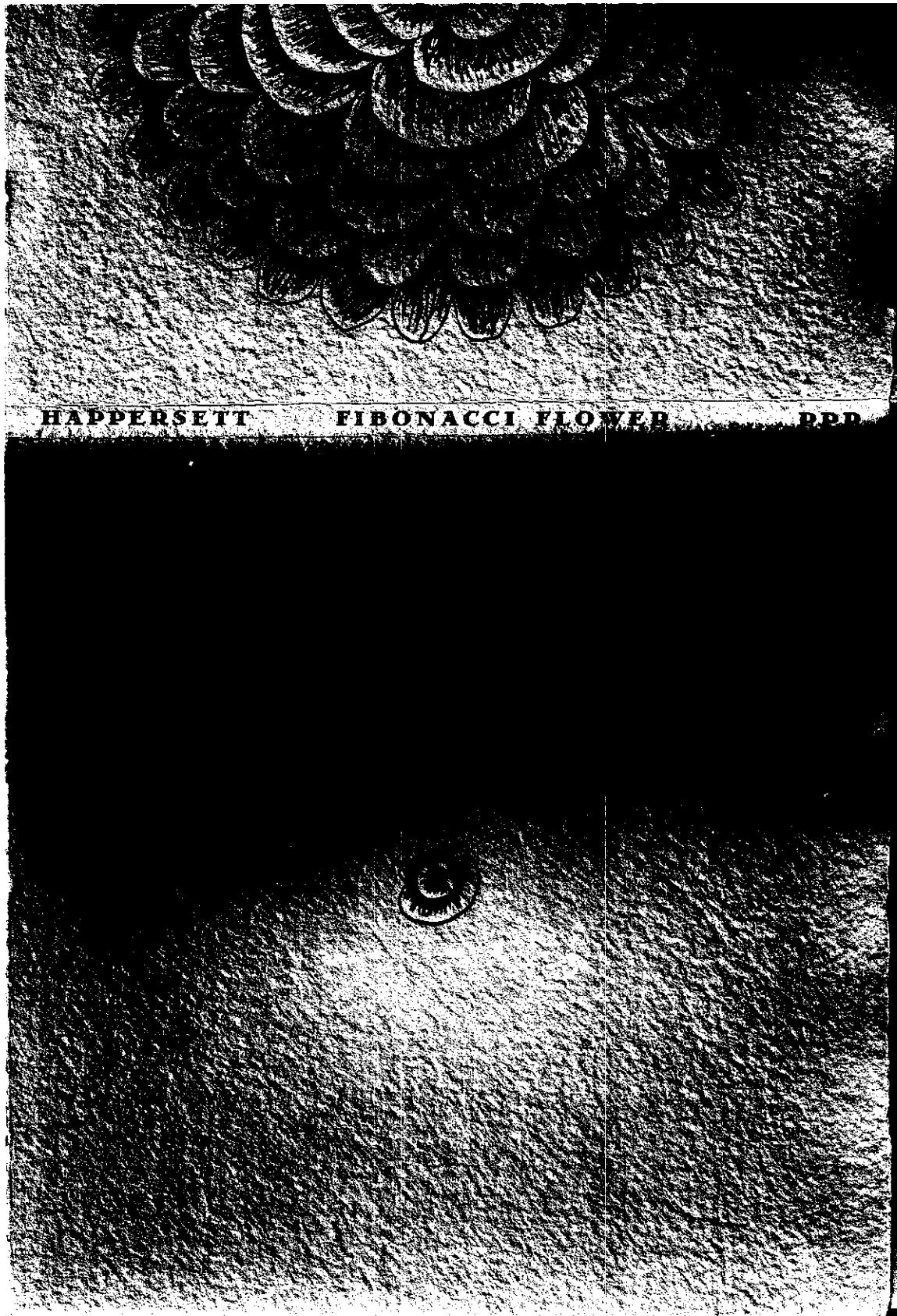
Susan Happersett



FIBONACCI
FLOWER



Purgatory Pie Press
New York City



design & structure

Esther K Smith

EKS *Susan Happerset Dikko Faust*

hand generated flowers
from the Fibonacci number sequence

Susan Happerset

letterpress

&

hand typography

Dikko Faust

This is N° *105* of 123

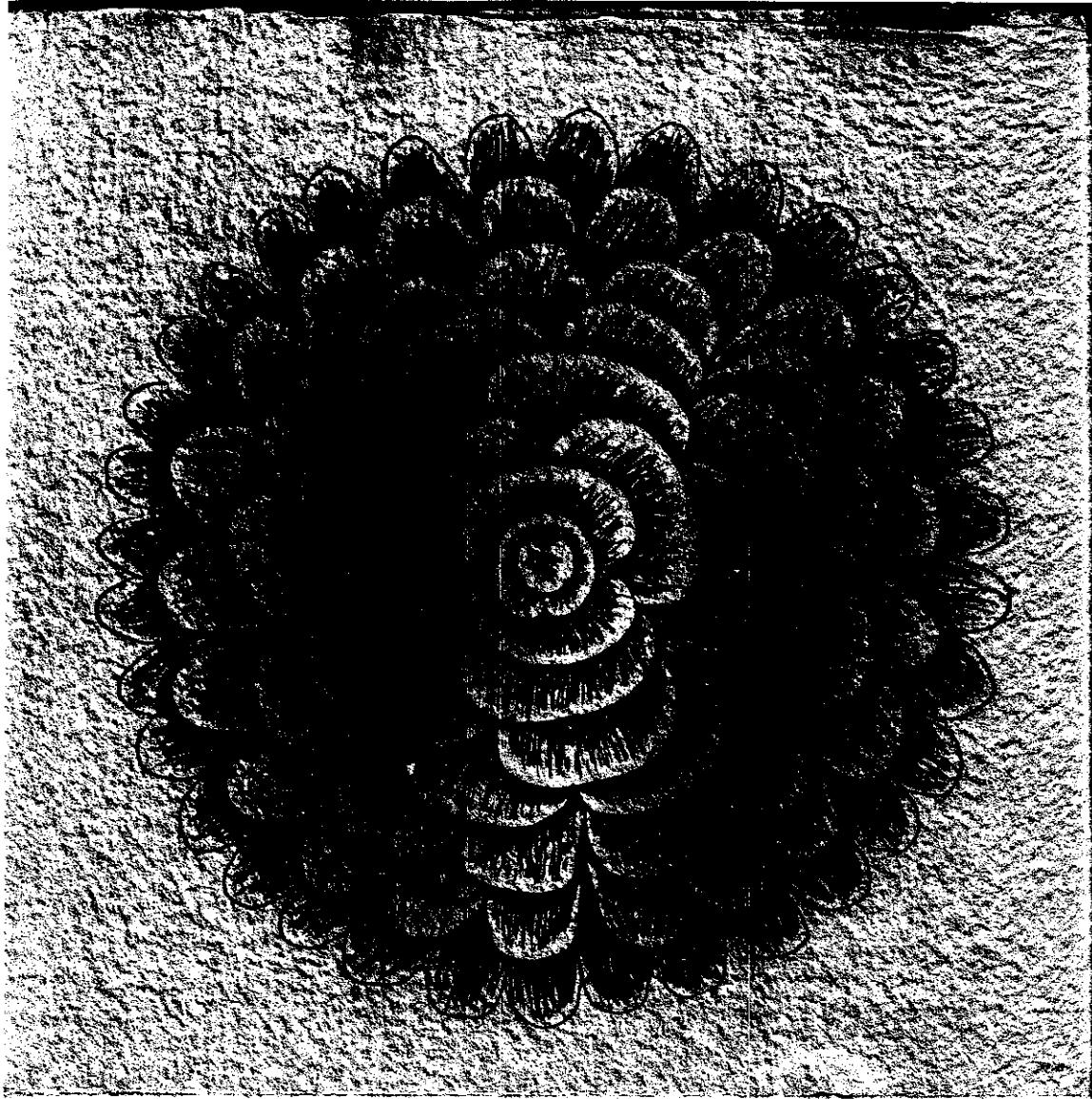
metal types

Weiss Roman, Sylvan,
Gallia, Raleigh Cursive,
Modern 720 & Derby

papers

Arches & St. Armand

© 2006
Susan Happerset &
PurgatoryPiePress.com
212-274-8228



34

13

8

5

2

1

21

3

1

3

21

2

5

8

13

34



NY ART BOOK FAIR - Mozilla Firefox

File Edit View History Bookmarks Yahoo! Tools Help

http://www.nyartbookfair.com/about.php

THE NY ART BOOK FAIR contact join mailing list benefit tickets credits

About

Printed Matter's annual fair of contemporary art books, art catalogs, artists' books, art periodicals, and 'tines offered for sale by over 140 international publishers, booksellers, and antiquarian dealers. Admission to the fair is FREE.

LOCATION
Philips de Pury & Company
450 West 15th Street at 10th Avenue, 3rd floor, NYC
(map)

FAIR HOURS
Friday/Saturday, October 24 & 25, 2008, 11am - 7pm
Sunday, October 26, 2008, 11am - 5pm

Admission to the NY Art Book Fair is free.

BENEFIT PREVIEW
6 - 9 pm, Thursday, October 29, 2008
\$20 - general admission plus ticket edition by Jonathan Monk

\$150 - general admission plus "I Married an Artist," by Anne Collier and Matthew Higgs, edition of 150

Both levels benefit Printed Matter, Inc.

NY ART BOOK FAIR COMMITTEE
Philip Aaron, AA Bronson, Skuta Helgason, Carolina Nitsch, Richard Prince, Dieter von Graffenreid, John Waters, Matthew Zucker

AA Bronson, Philip Aaron and John McWhinnie at the Benefit Preview of the 2006 NY Art Book Fair



S RE: revisions - Message ... Martinez Group Verizon ... WORLDGX Microsoft Excel - 1005-1... 1235-2 PPP v Anthropolo... Microsoft Word - Document2 - Microsoft ... iTunes

NY ART BOOK FAIR - Mozilla Firefox

File Edit View History Bookmarks Yahoo! Tools Help

http://www.nyartbookfair.com/exhibitors.php

THE NY ART BOOK FAIR contact join mailing list benefits/directs credits

Exhibitors

about exhibitors events conference hotel/sales press

2nd Cannons Publications

[A.R.T. Press \(Art Resources Transfer, Inc.\)](#)

[Actor D](#)

[Afterall](#)

[ANARTIST](#)

[Andrew Roth, Inc.](#)

[Arkitip](#)

[Art Metropolis](#)

[Art on Paper](#)

[Arthouse / D.A.P.](#)

[ARTEANCY](#)

[ARTFORUM](#)

[Artist's Space](#)

[Arsenal](#)

[Aspen Art Museum](#)

[Banana Books](#)

[BAS](#)

[Bassbo](#)

[Bengtsson Fine Art](#)

[Dongout](#)

[Book Works](#)

[BOOKFORUM](#)

[Booklyn](#)

[Bookulia](#)

[BUU! Magazine](#)

[Bywater Bros. Editions](#)

[Cahier](#)

[Capricious](#)

[Charles H. Scott Gallery](#)

[Christophe Daniell-Thiry](#)

[DADDY...THE MAGAZINE](#)

[Dalhousie Art Galleries](#)

[David Kost Publishing](#)

[DECODE BOOKS](#)

[DIA:Art Foundation](#)

[Dobbin Books](#)

[Drawn & Quarterly](#)

[Ediciones Originales](#)

[Electronic Arts Intermix \(EAI\)](#)

[Emily Carr Institute Press](#)

[Exit Art](#)

[Eye Level Gallery](#)

[Fitter](#)

[FREIGHT + VOLUME](#)

[GACARIN](#)

[Galeria Estampa](#)

[Gallery 360](#)

[Girls Like Us](#)

[Gregory R. Miller & Co.](#)

[Harpers Books](#)

[Hasida Books](#)

[Honoclast](#)

[IBI Books](#)

[J. m. COETZEE](#)

[Johan Deumens](#)

[John McWhinnie @ Glenn Lowry Bookseller](#)

[Malmo Kunsthall](#)

[Marcus Campbell Art Books](#)

[merpaper kunstsalon](#)

[mfc-michèle acquier le didier](#)

[Michael Lowe Gallery](#)

[modilbooks](#)

[Mount Saint Vincent University Art Gallery](#)

[Nieves](#)

[NSCAD University Press](#)

[onestarpress](#)

[Parkett](#)

[Passenger Books](#)

FRIENDLY FIRE, a curated selection of independent publishing by artists:

[Autonomedia](#)

[BAS](#)

[Bobo](#)

[Cinders Galleria](#)

[Dale Wittig](#)

[Darin Klein](#)

[Deep Dish TV](#)

[Dexter Sinister](#)

[Eleanor Brown](#)

[Elizens Forlag](#)

[Free! \(3implici\)](#)

[Heavy Times](#)

[Islands Fold](#)

[Jim Pezz / Back East Press](#)

[Kate Glitsberg](#)

[Kingsberg Press](#)

[Loving Date](#)

[Mark Pawson](#)

[Michalis Pichler](#)

[Not an Alternative](#)

[Ogma Books](#)

[Our Mouth](#)

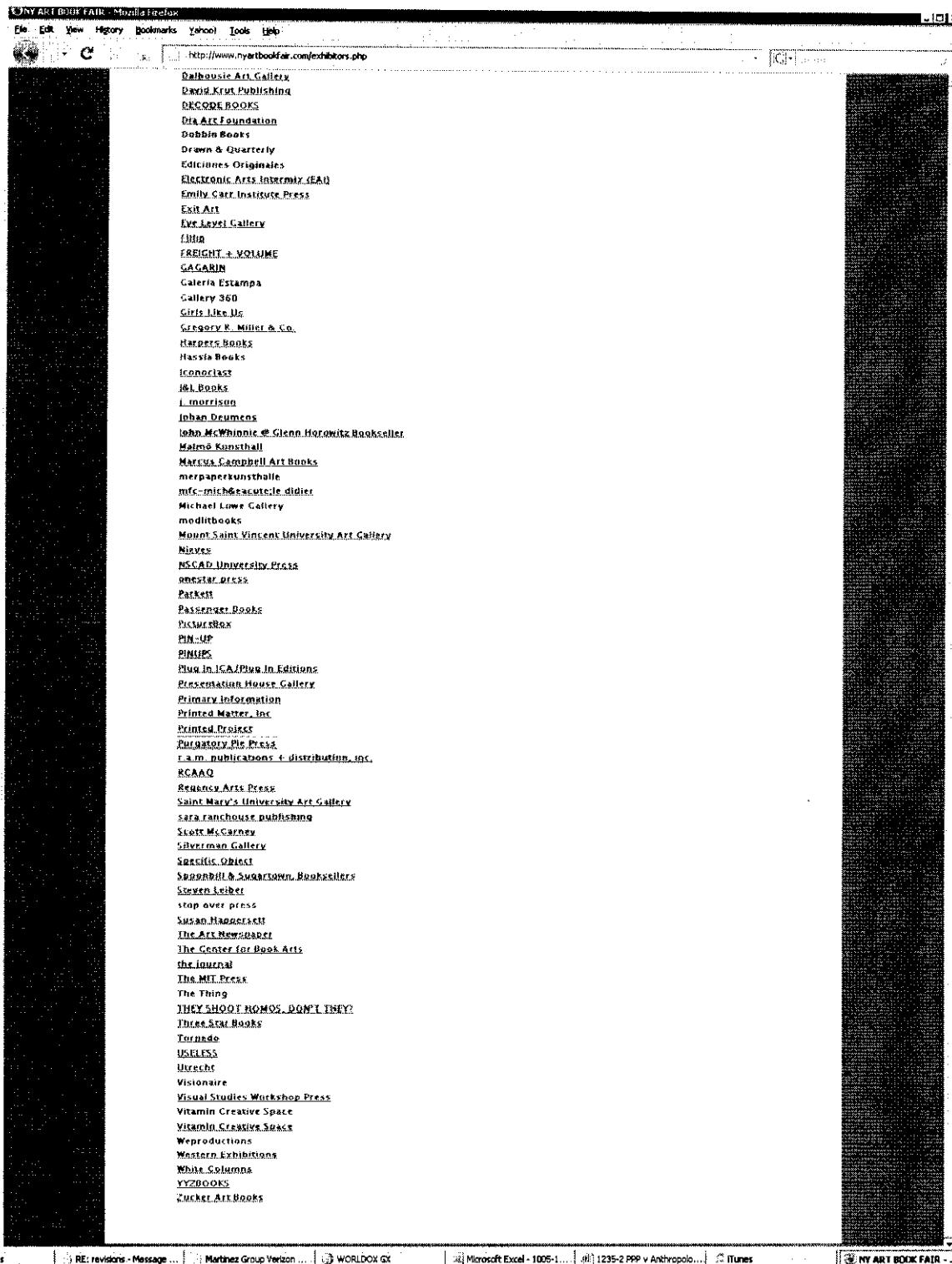
[Paper, Time, Television](#)

[RedZG](#)

[Retard Riot](#)

[World War 3 Illustrated](#)

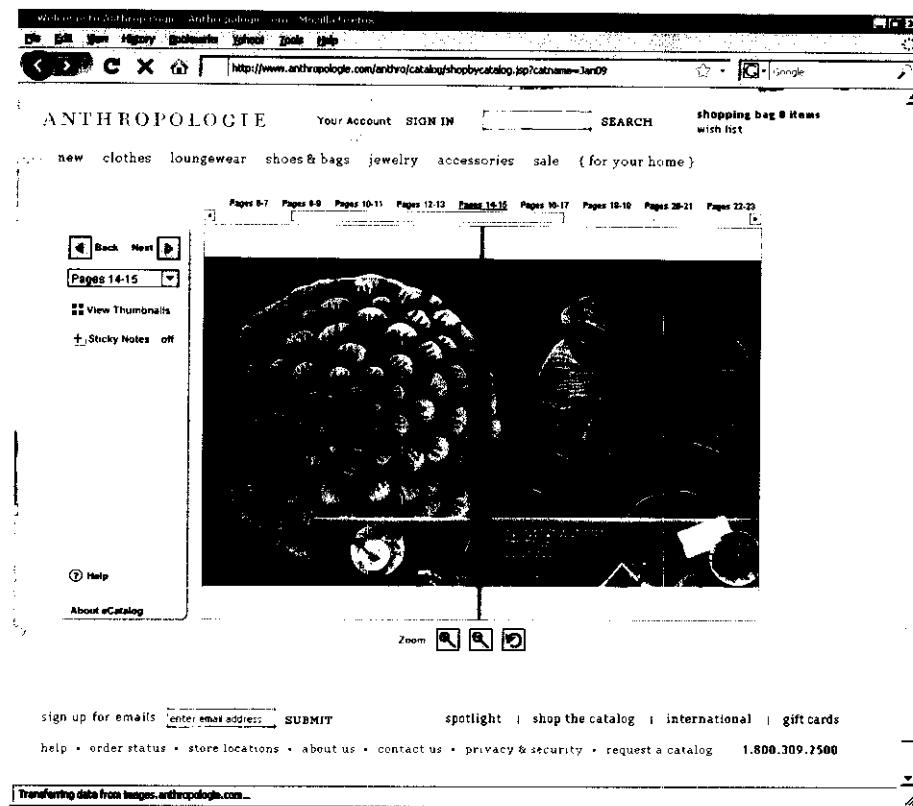
RE: revisions - Message ... Martinez Group Verizon ... WORLDGX Microsoft Excel - 1005-1... 1235-2 PPP v Anthropolo... Document2 - Microsoft ... iTunes

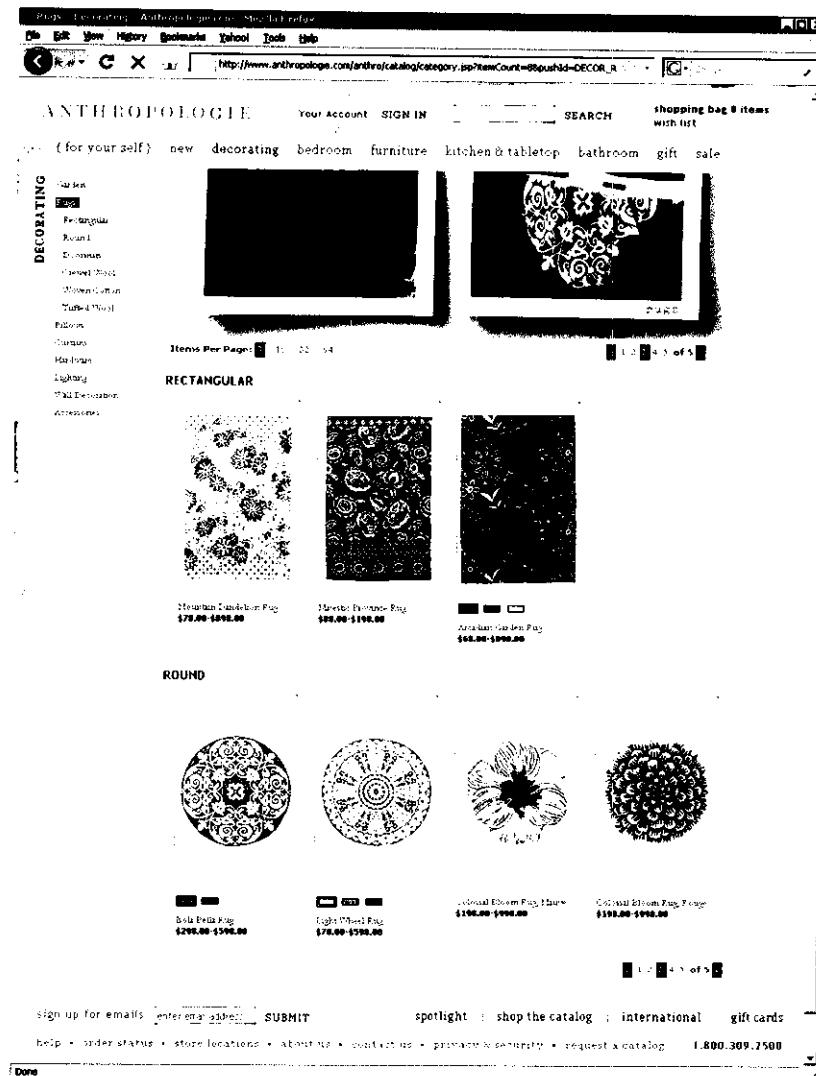


I love your work!
you are the best -
Alana Miller
alana@urbanart.com

You guys are the
Best. Keep on pretty-
D. Ryan

[Kristasvalbonas.com](http://kristasvalbonas.com)
Juan Roman Art Institute of NYC





Colossal Bloom Rug, Rouge Anthropologie.com Mozilla Firefox

File Edit View History Bookmarks Yahoo! Tools Help

http://www.anthropologie.com/anthro/catalog/productdetail.jsp?_dyncharset=ISO-8859-1&... Google

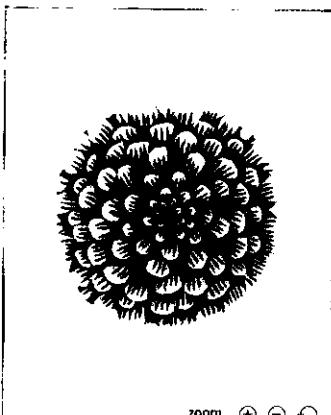
ANTHROPOLOGIE Your Account SIGN IN SEARCH shopping bag 0 items
wish list

{ for your self } new decorating bedroom furniture kitchen & tabletop bathroom gift sale

« previous next »

DECORATING

- Garden
- Furniture
- Rectangular
- Round
- Doormats
- Crewel Wool
- Woolen Cotton
- Tufted Wool
- Pillows
- Curtains
- Hardware
- Lighting
- Wall Decoration
- Accessories



zoom 

MORE VIEWS

[FRONT](#) [In Room](#)



( Open Larger Image)

COLOSSAL BLOOM RUG, ROUGE
style #633397
Colossal Bloom Rug, Rouge

selected: red

size:

3'5"	\$198.00	qty 0
5'	\$398.00	
8'	\$998.00	

[Checkout](#)

sign up for emails

spotlight | shop the catalog | international | gift cards

help • order status • store locations • about us • contact us • privacy & security • request a catalog 1.800.309.2500

Transferring data from Images.anthropologie.com...

